

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KAREN MCGEE,

§

Plaintiff,

§

v.

1:23-CV-820-DII

CITY OF AUSTIN, et al.,

§

Defendants.

§

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Dustin Howell concerning Defendant City of Austin’s Motion to Dismiss, (Dkt. 9), and Defendant Travis County’s (collectively, “Defendants”) Motion to Dismiss, (Dkt. 10). (R. & R., Dkt. 32). Defendants both timely filed objections to the report and recommendation. (Objs., Dkts. 34, 35). Plaintiff Karen McGee (“McGee”) filed an amended complaint soon after the report and recommendation was filed.<sup>1</sup> (Dkt. 33).

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Defendants timely objected to portions of the report and recommendation, the Court reviews those portions of the report and recommendation *de novo*. Having done so and for

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<sup>1</sup> McGee’s amended complaint was filed without the required motion for leave. The report and recommendation recommended that this Court deny any request from McGee for leave to amend her complaint and instructed McGee to “file a motion for leave” if she “still wants to amend her pleadings.” (R. & R., Dkt. 32, at 26). Despite those instructions and in violation of the Federal Rules of Civil Procedure, McGee filed an amended complaint without a motion for leave. (Dkt. 33). The Court will strike McGee’s amended complaint, (Dkt. 33), moot the subsequent motion to dismiss, (Dkt. 44), and moot the referral of that motion to dismiss, (Text Order 8/29/24).

the reasons given in the report and recommendation, the Court overrules Defendants' objections and adopts the report and recommendation as its own order.

The Court **ORDERS** that the report and recommendation of United States Magistrate Judge Dustin Howell, (Dkt. 32), is **ADOPTED**.

**IT IS FURTHER ORDERED** that Defendants' motions with respect to McGee's ADA and RA claims are **DENIED** and their motions with respect to McGee's *Monell* and TTCA claims are **GRANTED**.

**IT IS FURTHER ORDERED** that McGee's amended complaint, (Dkt. 33), is **STRICKEN** as improperly filed without a motion for leave to amend. Only McGee's ADA and RA claims against Defendants survive.

Given that there is no amended complaint, **IT IS FINALLY ORDERED** that Defendant Travis County's motion to dismiss, (Dkt. 44), and the referral of that motion, (Text Order 8/29/24), are **MOOT**.

**SIGNED** on September 26, 2024.

  
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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE